

Murphy J^{T2}

Office - Supreme Court, U. S.

FILED

MAR 15 1945

CHARLES ELMORE OROPPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1043

JAMES H. O'HARA,

Petitioner,

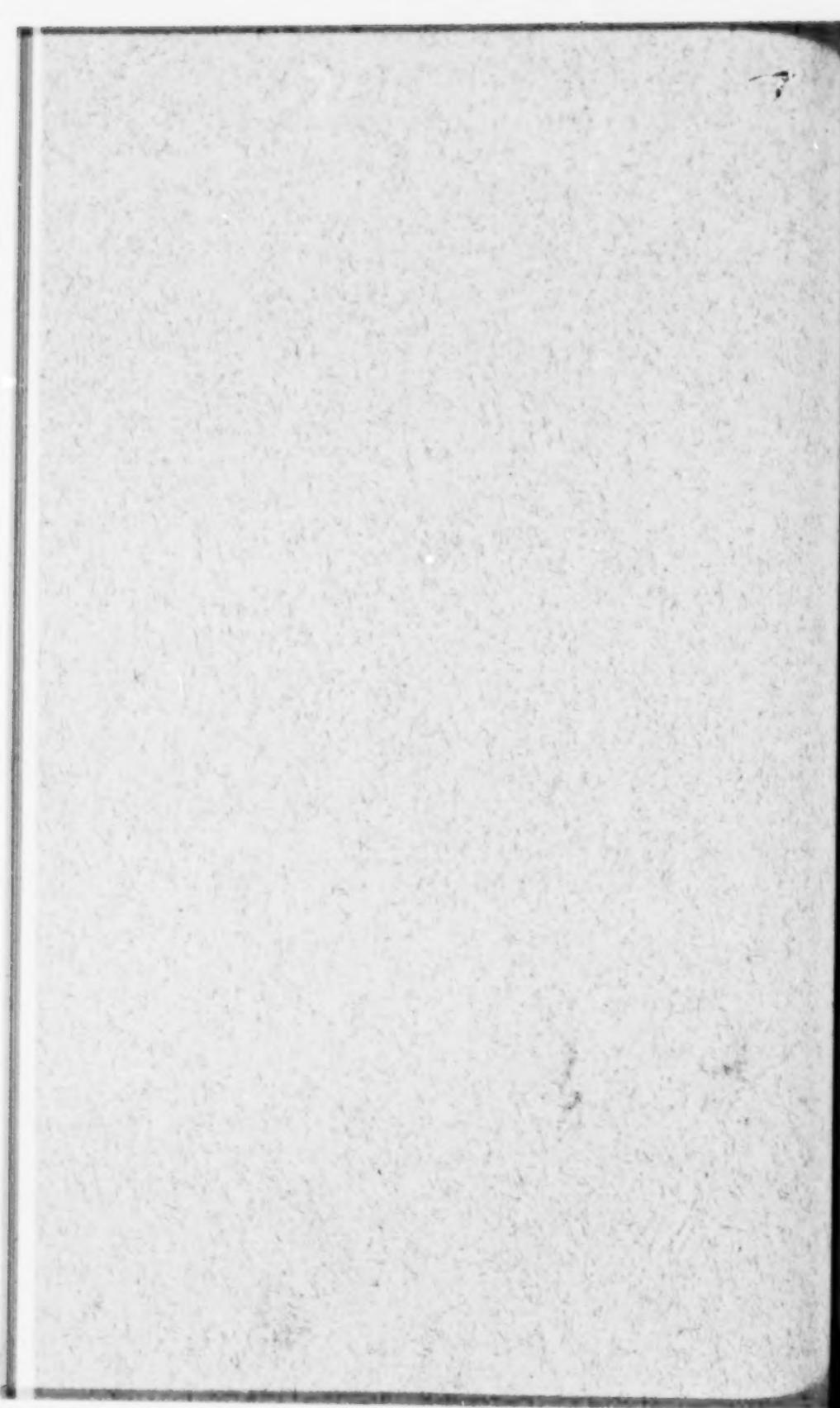
versus

DISTRICT OF COLUMBIA

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA AND BRIEF IN SUP.
PORT THEREOF.

WILLIAM J. O'MAHONY,
Counsel for Petitioner.

T. EMMETT MCKENZIE, and
JAMES L. BUCKLEY,
Of Counsel.



INDEX

SUBJECT INDEX

	Page
Petition for writ of certiorari.....	1
Questions presented.....	1
Summary statement of matters involved.....	2
Jurisdiction to review the judgment.....	4
Reasons relied upon for allowance of writ.....	4
Brief in support of petition for writ of certiorari.....	7
Opinions of the courts below.....	7
Jurisdiction.....	7
Statement of the case.....	8
Court rules involved.....	8
Specification of errors.....	9
Summary of argument.....	9
Argument.....	10
<i>Point 1.</i> The Court of Appeals below should not have departed from the usual and ac- cepted course of judicial proceedings, when it departed from the record and decided that a motion for summary judgment in favor of the District of Columbia was granted by the District Court below.....	10
<i>Point 2.</i> The Court of Appeals below should not have departed from the usual and ac- cepted course of judicial proceedings, when it departed from the record and sought to adjudicate matters of fact, in the absence of any evidence of record in the case.....	11
Conclusion.....	13

TABLE OF CASES

<i>Commonwealth v. Wakelin</i> , 230 Mass. 567, 571.....	11
<i>Farmers' State Bank v. Kirkland</i> , 200 Ala. 146.....	11
<i>Ginn v. Knight</i> , 196 Okla. 4.....	11
<i>Lopp v. Lopp</i> , 181 N. Y. S. 476.....	11

	Page
<i>Phillips v. Gannon</i> , 188 Ind. 497.....	11
<i>Reynolds v. Stockton</i> , 140 U. S. 254, 268.....	12
<i>Townsend v. Wisner</i> , 62 Iowa 678.....	12
<i>Windsor v. McVeigh</i> , 93 U. S. 274, 283.....	12

TEXT BOOKS

42 Corpus Juris, sec. 31, p. 478.....	11
49 Corpus Juris, sec. 9, p. 35.....	11

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1043

JAMES H. O'HARA,

versus

Petitioner,

DISTRICT OF COLUMBIA

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA**

MAY IT PLEASE THE COURT:

James H. O'Hara, petitioner, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above entitled cause on December 26, 1944, affirming a summary judgment of the District Court of the United States for the District of Columbia in favor of the District of Columbia, a municipal corporation.

Questions Presented

The questions presented for consideration are as follows:

I

Whether the District Court below, after entering an order denying the plaintiff's motion for judgment, has the power,

in the absence of the vacation of such judgment, to subsequently enter an order granting the plaintiff's similar motion for judgment in its favor, adjudging that the plaintiff have and recover possession of the certain real estate involved in the civil action?

II

Whether a defendant in a suit for ejectment, wherein he has demanded a trial of the issues by a jury, may be lawfully deprived of such trial by the Court, by means of its entry of an order granting a motion of the plaintiff for judgment in its favor, and without supporting evidence of any nature, and not filed pursuant to Rule 56 of the Federal Rules of Civil Procedure?

Summary Statement of the Matter Involved

This cause originated in the Municipal Court of the District of Columbia as an action in Forceable Entry and Detainer, brought by the District of Columbia, as a municipal corporation, against the petitioner, James H. O'Hara, on February 8, 1943. The basis of the action was that the District of Columbia had previously acquired the fee simple title to certain land of the petitioner, through condemnation proceedings in the District Court below brought for the purpose of erecting a school-building thereon; that thereafter the petitioner had refused to surrender possession of the premises to said District; had refused to pay any rental to said District for the use of said premises while it was preparing but unable to utilize the land for school uses.

Petitioner in the cause in the Municipal Court set up the plea that title to the land was in him; whereupon the cause was certified or transferred to the District Court below for trial in accordance with its rules, the Federal Rules of Civil Procedure, and the laws of said District. After certifica-

tion of the cause to the District Court, petitioner by his answer (R. 9-10) asserted the defense that the District of Columbia could not, by reason of existing federal priority decrees, obtain materials for the construction of a school-building on the land involved, either then or in the determinable future; that said District had never made inquiry from any authority as to the possibility of use of the land for a school-building, from the standpoint of construction, and had, therefore, decided upon renting the property pending such time as a school-building could, if ever, be erected thereon. (R., 5-6).

The District Court, with Justice Pine sitting, in ruling upon the plaintiff's motion for judgment in its favor, adjudged that there was a genuine issue as to a material fact, in that the possibility of a reverter of title to the petitioner, through abandonment, forfeiture, misuser and non-user of such land, was a matter of fact to be determined upon the merits before a jury. (R. 6). Thereupon the District of Columbia amended its complaint (filed in the suit in the Municipal Court) with the permission of petitioner, and set forth the same facts, (R. 7-8), as set forth in the original complaint. (R. 1). Immediately thereafter the plaintiff filed a second motion for judgment on the ground "that there is no genuine issue as to any material fact, and that the plaintiff is entitled to a judgment as a matter of law." (R. 10). This motion does not seek a summary judgment in favor of the plaintiff, under Rule 56 of the Federal Rules of Civil Procedure, and is not supported by any evidence whatever from the plaintiff. Yet the order of Justice Bailey, on his own motion, supplied the word "summary" and "all affidavits filed in support of and in opposition to said motion and the record in district Court Cause No. 2731," (R. 13). This order granting the plaintiff's second motion for judgment in its favor, and, also, adjudged that the plaintiff have and recover possession of the real estate involved

in the action. (R. 13). And from this order and judgment the petitioner (defendant) took an appeal to the United States Court of Appeals for the District of Columbia.

The Court of Appeals below, on its own motion, supplied the deficiencies apparent of record, in that its opinion declared: "A motion for *summary* judgment in favor of the District was granted by the court below from which judgment this appeal was taken." That Court, by its opinion, also attempted to adjudicate divers matters of fact about which there is no evidence in the record, as no evidence was adduced by either party in the case.

The time for filing of this petition for certiorari expires on March 25, 1945. This petition was filed in this Honorable Court on March 15, 1945.

Jurisdiction to Review the Judgment

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936 (28 U. S. C. A., section 347 (a)). The judgment of the United States Court of Appeals for the District of Columbia was entered December 26, 1944. This petition was filed March 15, 1945.

Reasons Relied On For the Allowance of the Writ

The writ prayed should be allowed by this Court for the following reasons:

1. *Because of the important question of practice.* In this case the District Court below rendered two judgments, the first by Justice Pine, and the second by Justice Bailey. Such proceedings have no precedent in the history of jurisprudence in this country. The latter judgment was called by the Court a "summary" judgment, yet no motion therefor was ever made by the District of Columbia, pursuant to

the Rule 56 of the Federal Rules of Civil Procedure. And the Court of Appeals below, in its opinion merely assumed, without looking at the record, that a motion for "summary" judgment was made in the trial Court, and then affirmed the action of that Court which supplied the omissions, and then proceeded to adjudicate matters of fact about which there is no evidence in the record. This judgment of that appellate Court therefore, is absolutely void, because it transcended the limits of its authority in this cause. In *Windsor v. McVeigh*, 93 U. S. 274, 282, this Court declared: "Though the court may possess jurisdiction of a cause, of the subject matter, and of the parties, it is still limited in its mode of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law."

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued by this Court, directed to the United States Court of Appeals for the District of Columbia, commanding that Court to certify and send to this Court, for review and determination, a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket as "James H. O'Hara, appellant, versus District of Columbia, appellee, No. 8674," and that the judgment of the Court of Appeals below be reversed by this Court, and that your petitioner have such other and further relief in the premises as to this Court may seem just and proper; and your petitioner will ever pray.

WILLIAM J. O'MAHONY,
Attorney for Petitioner.

T. EMMETT MCKENZIE,
JAMES L. BUCKLEY,

Each of Counsel.